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8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
AT TACOMA

10 UNITED STATES OF AMERICA,

11 Plaintiff,

12 v.

13 ALVIN A. JOSEPH,

14 Defendant.
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CASE NO. CR08-5012BHS

ORDER DENYING MOTION
IN LIMINE TO SUPPRESS
STATEMENTS

16 This matter comes before the Court on Defendant's Motion in Limine to Suppress
17 Statements (Dkt. 15). The Court has considered the pleadings filed in support of and in
18 opposition to the motion, the argument of counsel at the suppression hearing, the parties'
19 supplemental briefing, and the remainder of the file and hereby denies the motion for the
20 reasons stated herein.

21 **I. BACKGROUND AND DISCUSSION**

22 Defendant moves to suppress statements made after he was given *Miranda*
23 warnings. Dkt. 15. Defendant contends that his inculpatory question to Officer Daniel
24 Long after Mr. Joseph was advised of his *Miranda* rights by Sergeant John Rosenquist
25 should be suppressed because Sergeant Rosenquist's *Miranda* warnings were inadequate
26 and because Mr. Joseph did not waive his right to remain silent. Specifically, Mr. Joseph
27 contends that Sergeant Rosenquist did not confirm whether Mr. Joseph heard or
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1 understood the *Miranda* warnings and did not confirm whether Mr. Joseph was willing to
2 waive his rights. Dkt. 35 at 1-2.

3 A defendant's waiver of *Miranda* rights may either be express or implied but must
4 be knowing, voluntary, and intelligent. See *United States v. Younger*, 398 F.3d 1179,
5 1185 (9th Cir. 2005). There is a presumption against waiver of *Miranda* rights. *Id.* The
6 burden of overcoming this presumption is "heavy." *United States v. Rodriguez*, --- F.3d
7 ----, 2008 WL 623982, at *2 (9th Cir. March 10, 2008). To determine whether there is a
8 valid waiver of rights, courts consider the totality of the circumstances. *Younger*, 398
9 F.3d at 1185. In this case, the totality of the circumstances relevant to the instant motion
10 is as follows:

11 While Mr. Joseph did not acknowledge Sergeant Rosenquist's recitation of rights,
12 Sergeant Rosenquist assumed that Mr. Joseph heard his *Miranda* rights because Sergeant
13 Rosenquist spoke loud enough and clearly. Mr. Joseph did not invoke his right to remain
14 silent and instead asked Sergeant Rosenquist why he was being removed from the vehicle
15 and why he was being searched. Later, when speaking with Officer Long, Mr. Joseph
16 challenged whether the police had authority to detain him.

17 There are several considerations that would have warranted an inquiry into Mr.
18 Joseph's mental state to ensure that he understood the rights he was allegedly waiving:
19 Mr. Joseph was across the street from a suspected drug house, Mr. Joseph reported that he
20 had been drinking and had passed out in the vehicle, the driver of the vehicle was
21 reportedly on a three-day "crack binge," and some of Mr. Joseph's statements to the
22 police were overly personal in nature. At the suppression hearing, Sergeant Rosenquist
23 testified that he was unaware that Mr. Joseph reported having consumed alcohol and that
24 Mr. Joseph was responsive and cooperative. Officer Long recalled that Mr. Joseph
25 appeared coherent and normal.

26 Finally, and perhaps most importantly, Mr. Joseph's prior arrest history suggests
27 that Mr. Joseph is familiar with the criminal justice system generally and with *Miranda*
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1 warnings particularly. At the suppression hearing, the parties stipulated that Mr. Joseph
2 received *Miranda* warnings during three prior arrests and that he acknowledged that he
3 understood those warnings.

4 Based upon a consideration of the totality of the circumstances as a whole, the
5 Court concludes that the Government has met its heavy burden of overcoming the
6 presumption against finding waiver of Mr. Joseph's *Miranda* rights and therefore declines
7 to suppress Mr. Joseph's statements.

8 **II. ORDER**

9 Therefore, it is hereby

10 **ORDERED** that Defendant's Motion in limine to Suppress Statements (Dkt. 15) is
11 **DENIED.**

12 DATED this 1st day of April, 2008.

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16 BENJAMIN H. SETTLE
17 United States District Judge
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